



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2003

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2003-9223

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193107.

The Garland Police Department (the "department") received a request for (1) a police report relating to an alleged assault by a named individual on a specified date and (2) all reports relating to a particular address during a specified time interval. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. You contend that some of the submitted information is confidential under section 261.201 of the Family Code. Chapter 261 of the Family Code governs information that relates to reports and investigations of alleged or suspected child abuse or neglect. Section 261.201 provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see also* Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor). We agree that section 261.201(a) is applicable to some of the submitted information. You do not inform us of any rule adopted by the department that would permit the release of this information in this instance. We therefore assume that no such rule exists. Given that assumption, we conclude that the department must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code as information made confidential by law.¹

A social security number is confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body under any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). You have marked a social security number that you contend is confidential under the federal law because it was obtained and is maintained as part of the department's arrest or incident/investigation records. You do not inform us, however, that the social security number in question was obtained or is maintained under any specific provision of law enacted on or after October 1, 1990. Furthermore, we are not otherwise informed of any law enacted on or after October 1, 1990 that authorizes or requires the department to obtain or maintain this social security number. Thus, we have no basis for concluding that the social security number in question was obtained or is maintained under such a law and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing the social security number that you have marked, the department should ensure that this social security number was not obtained and is not maintained under any provision of law enacted on or after October 1, 1990.

You also raise section 552.108 of the Government Code. This section provides in part:

¹We note that a parent or other legal representative of a victim of alleged child abuse or neglect may be entitled to obtain portions of the requested information from the Texas Department of Protective and Regulatory Services. *See* Fam. Code § 261.201(g).

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2).² Generally speaking, these provisions of section 552.108 are applicable to two mutually exclusive types of law enforcement information. Section 552.108(a)(1) applies if the release of the information at issue would interfere with a pending investigation or prosecution. Section 552.108(a)(2) is applicable only if the information in question pertains to a concluded case that did not result in a criminal conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You raise section 552.108 with regard to marked portions of the submitted information. You explain that the department collected the information in question in connection with investigations of the alleged offenses. You inform us that this information relates to a pending investigation. You also state that at the time of your request for this decision, the investigation had not resulted in a conviction or a deferred adjudication. Having considered your representations, we find that you have demonstrated that section 552.108(a)(1) is applicable in this instance. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). We therefore conclude that the department may withhold the marked portions of the submitted information under section 552.108.

Lastly, we address your claim under section 552.130 of the Government Code. This section excepts from public disclosure information that relates to "a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(2). Assuming that

²Section 552.108(a)(4) protects information that "is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation" or that "reflects the mental impressions or legal reasoning of an attorney representing the state" *See* Gov't Code § 552.108(a)(4)(A)-(B). This provision of section 552.108 is applicable to information prepared or held by a prosecutor. You do not indicate that any of the information that the department seeks to withhold under section 552.108 comes within the scope of section 552.108(a)(4).

the license plate numbers that you have marked relate to Texas automobile registrations, we agree that you must withhold the marked license plate numbers under section 552.130.

In summary: (1) the submitted information that we have marked is confidential under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) the marked social security number may be confidential under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code; (3) you may withhold the marked portions of the submitted information under section 552.108(a)(1); and (4) you must withhold Texas license plate numbers under section 552.130. The rest of the submitted information must be released. As we are able to make these determinations, we need not address your other arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

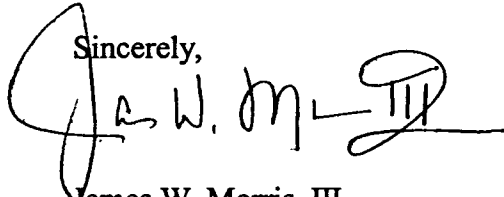
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. W. Morris, III'. The signature is fluid and cursive, with a large initial 'J' and a stylized 'M'.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 193107

Enc: Submitted documents

c: Ms. Wendy Wilder
4569 Chaha Road, #337
Garland, Texas 75043
(w/o enclosures)